

Development Agreement

This Development Agreement (“Agreement”) is entered into as of the ___ day of _____ 2015 (the “Effective Date”) by and between the **CITY OF BURLINGTON**, a Vermont municipal corporation (the “City”), **VERMONT LAND TRUST, INC.**, a Vermont non-profit corporation (“VLT”), **CHAMPLAIN HOUSING TRUST, INC.**, a Vermont non-profit corporation (“CHT”), and **BC COMMUNITY HOUSING, LLC**, a Vermont limited liability company (“BCCH”). Hereafter, the City, VLT, CHT, and BCCH may each be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, BCCH is the owner of ±27.65 acres of land situated between North Avenue and Lake Champlain, with an address of 311 and 329 North Avenue, Burlington, as more particularly described on *Exhibit A* attached hereto (“the Property”), and as depicted on the plan entitled “BC Community Housing & Burlington College, Site Concepts” prepared by TJ Boyle Associates, a copy of which is attached hereto as *Exhibit B* (the “Plan”); and

WHEREAS, BCCH, the City, CHT, and VLT undertook a non-binding collaborative planning process for the purpose of exploring possible site designs for the Property that resulted in the Plan outlined in the Site Design Process Memorandum of Understanding (*Exhibit C*); and

WHEREAS, the City and VLT wish to preserve ±12 acres of the Property for use as open space/park space (the “Public Open Space”); and

WHEREAS, CHT is working in collaboration with non-profit partners and other affordable housing entities and wishes to develop 160 units of affordable rental housing for seniors and families which satisfy the inclusionary zoning requirements for rental housing established by the Burlington zoning ordinance (the “CHT Project”) on a portion of the remaining ±15.65 acres of the Property; and

WHEREAS, BCCH wishes to develop a portion of the remaining ±15.65 acres of the Property for a variety of housing types and non-residential uses (the “BCCH Project”), in conjunction with the development of a 6 acre parcel owned by Burlington College as depicted on the plan (the “College Parcel”) for a variety of housing types and non-residential uses; and

WHEREAS, the Parties have reached conceptual agreement on a development and public open space plan for the Property; and

WHEREAS, the process to develop the Plan identified a number of principles restricted by current zoning including, but not limited to, clustering density towards North Avenue and away from the Lake, increasing allowable building heights and reducing surface parking, with an understanding that the above changes are not for the purposes of increasing unit counts or decreasing affordable housing units but rather for the purposes of reconfiguring allowable development and conserving open space, as generally depicted on the Plan; and

WHEREAS, the Parties are in mutual support of good faith efforts to achieve zoning ordinance changes which will allow for reasonable phasing of a project of this magnitude and that will implement the design principles described in the previous paragraph.

WHEREAS, the Public Open Space, the CHT Project the BCCH Project and any development on the College Parcel by BCCH (all as defined below) may be referred to collectively herein as the “Projects.”

WHEREAS, for the purposes of permitting, it is the intent of the Parties that all the Projects will be considered and reviewed as a single PUD; and

NOW THEREFORE, in consideration of the covenants, considerations and mutual benefits set forth herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

I. Property Use and Development.

1. BCCH, including CHT’s project, plans to establish a multi-lot mixed-use subdivision on the Property. Division and development of the Property shall occur substantially as depicted on the Plan. Any material modifications made to the Plan by BCCH shall be submitted to the City, CHT and VLT with a 10-day opportunity to provide reasonable objections in writing. An objection shall not be reasonable if the material modification(s) proposed by BCCH are consistent with the goals set forth in this Agreement and do not adversely affect a Party’s realization of its expectations under this Agreement. In the event BCCH receives reasonable objections in writing, BCCH shall revise and modify said material modifications to the extent necessary to satisfy any reasonable objections thereto and resubmit the same, as revised, to the City, CHT and VLT. If no objections are made, any such material modification(s) shall be deemed approved by the Parties. In addition, BCCH may make non-material modifications to the Plan from time to time as final design, engineering and permitting of the Development Parcel proceeds provided such modifications are consistent with the goals set forth in this Agreement and do not adversely affect a Party’s realization of its expectations under this Agreement. In addition, provided BCCH adheres to the requirements set forth in Section II below, BCCH shall have the right, in its sole discretion, to make adjustments and modifications to the individual building designs, unit mix and other aspects of the buildings on the Development Parcel without the prior agreement of the Parties, provided such adjustments and modifications are consistent with the goals set forth in this Agreement and do not adversely affect a Party’s realization of its expectations under this Agreement.
2. The Plan contemplates significant development by BCCH and others, including CHT, on a ±15.65 acre portion of the Property (hereafter referred to as the “Development Parcel”), consisting of housing of a variety of types, including affordable and market price residences, both for sale and for rent. A portion of the Development Parcel will be purchased by CHT (the “CHT Parcel”) and improved by CHT and others with 160 units of affordable rental housing for seniors and family housing (the “CHT Project”). The balance of the Development Parcel will be developed by BCCH in the manner described in Section II (1), below, and as shown on the Plan.

3. The Plan contemplates that the City will purchase the Public Open Space, which includes the so-called “Stone House” and its associated garage and which includes that portion of so-called “Texaco Beach” owned by BCCH. The Plan contemplates that the City will improve, own and manage the Public Open Space as open space/park for public purposes; without limitation, except for the provisions of section III below, the City will maintain that portion of so-called “Texaco Beach” owned by BCCH as a public beach under such rules and regulations as apply to City beaches.

II. Development Parcel.

1. Construction on the Development Parcel may include, but not be limited to:
 - a. Approximately 2,200 square feet of new public street with two access points on North Avenue, to be constructed at BCCH’s expense.
 - b. 410 units, more or less, of market-rate housing units, both for sale and for rent, including work force housing, so-called and as described in Section II(2) below, developed by BCCH or others together with such non-residential neighborhood-oriented uses as deemed appropriate.
2. In addition to the affordable rental housing to be developed by CHT and others, as set forth in section V below, BCCH will endeavor, but not be obligated, to develop some “work force housing,” both for sale and for rent; work force housing being that which targets households with incomes between 80% and 120% of the median income for the Burlington/South Burlington MSA, adjusted for family size. If CHT so elects, BCCH will make a good faith effort to develop all or a portion of the work force housing in partnership with CHT. BCCH will develop a sufficient number of units, which may include the work force housing that targets the 80% level, in satisfaction of the “for sale” inclusionary zoning (“IZ”) requirements of the BCCH Project. These "for sale" IZ units will be located on the lot identified as #3 on Exhibit B and such units shall be occupied as per the requirements of Article 9 of the City of Burlington Comprehensive Development Ordinance.
3. The infrastructure developed on the College Parcel may include certain infrastructure shared with the Property, including shared access, utility connections and similar improvements for the mutual benefit of the College Parcel and the Property.
4. BCCH shall use good faith efforts to design and develop the Development Parcel as a “sustainable neighborhood,” considering and applying a standard agreed upon by the Parties and established with the advice and guidance of Burlington Electric Department and such other professionals as BCCH may retain, provided, however, that the application of said standards shall be determined by BCCH, in its sole discretion, and

shall be economically feasible and appropriate to the Development Parcel. The Parties will agree on the standard by February 1, 2016. BCCH recognizes that economic feasibility will be analyzed considering both construction costs as well operating costs over the life of the BCCH Project and will explore design options that demonstrate sustainability innovation.

5. The Projects shall have no more than 770 total residential units.

III. Public Open Space.

1. The City shall designate the Public Open Space as part of its Urban Wilds (Exhibit D) category taking into account proposed limited recreational use (trail, community gardens, recreational path connecting to the new public street and open field space) and the existing stone house and garage.
2. BCCH and the City will work collaboratively and in good faith to select a location and configuration for a paved recreation path on the Public Open Space, connecting the new public street to the City's existing recreation path; such new section of the recreation path to be constructed by BCCH at its expense, however, upon its completion, it shall be owned and maintained by the City and made perpetually available to the public. If the City and BCCH cannot agree on a location and/or configuration for the new portion of the recreation path, then BCCH shall have the right to construct, concurrent with the completion of the public street, a privately-owned and maintained recreation path on the Building #8 parcel as depicted on the Plan (the "Building #8 Parcel") with an easement on, over and through the Public Open Space to construct and maintain a recreation path to connect to the City's existing recreation path.
3. The Parties' goals are to manage all storm water on site and to not increase storm water discharge into the City's combined sewer system. BCCH and the City shall collaboratively work on effective, primarily subterranean storm water management on the Public Open Space and serving the Development Parcel and the College Parcel, that maintains the drainage regime to Lake Champlain in the northwest corner of the Property, including BCCH's access to and use of the existing "box culvert" in that location as a component of the overall storm water management strategy for the Property and the College Parcel. This storm water management system may include an easement over, on and through the Public Open Space for BCCH to establish and maintain a storm water detention pond and to install, use and maintain a pump station in the northwest corner of the Property. Such management system shall not impede public use of the Public Open Space, nor shall it adversely impact use and maintenance of the Public Open Space or cause erosion of the recreation path.

IV. Acquisition of the Public Open Space by the City and VLT.

1. On or before February 1, 2016, the City and VLT shall close on the purchase of the Public Open Space from BCCH, for a purchase price of Two Million and 00/100 Dollars (\$2,000,00.00) (the “Conservation Payment”) due in cash at closing, on the following terms and conditions:
 - a) BCCH shall survey, and secure a boundary line adjustment to create the 12 acre Public Open Space parcel as depicted on the Plan.
 - b) The sale will be subject to an existing lease of the stone house to Burlington College, provided that the College is current on all payments and is otherwise in compliance with all terms and conditions of the lease at the time of closing.
 - c) The City and VLT agree to be co-applicants and agree that the Public Open Space will be included in BCCH’s application for a Planned Unit Development encompassing the Development Parcel, the College Parcel and the Public Open Space. The City and VLT’s obligation to participate as co-applicants shall expire if and when the City approves an amendment to zoning that supports the development depicted on the Plan.
 - d) The sale shall be subject to an Option reserved and held by BCCH to repurchase the Public Open Space if either of the following conditions are not met: the City does not approve the requisite zoning changes for the Projects, as provided in paragraph VI(2), below; or if the DRB, for any reason, fails to accept the Certificate of Inclusionary Housing Compliance and/or otherwise fails to accept CHT's right to develop affordable housing (qualifying IZ) units on the CHT parcel, now or in the future, as representing the full satisfaction of BCCH's inclusionary zoning requirements for the BCCH Parcel and the College Parcel for the portion of the Projects developed as multi-family rental units. The Option shall expire upon the City’s approval of the zoning change and the DRB’s acceptance of the Certificate(s) of Inclusionary Housing Compliance based upon CHT's right to develop the CHT Project on the CHT Parcel, now or in the future, in full satisfaction of BCCH's inclusionary zoning requirements for the portion of the Projects developed as multi-family rental units. If either of the two conditions cited above are not met, then BCCH shall have the right within ninety (90) days of the failure of either condition to provide its notice of intent to repurchase. Within six (6) months of the notice BCCH shall close on the repurchase of the Public Open Space, including any and all improvements thereon, made by the City or VLT after the closing referred to in paragraph 1 above, for a price of Two Million Dollars, plus interest at the rate of 5% per annum running from original date of City/VLT acquisition, free and clear of all liens, mortgages, conservation easements and

encumbrances. Additionally, if BCCH exercises this option, all applicable Parks Impact Fees will be assessed against the BCCH Project notwithstanding the provisions of Section VI, Paragraph 1 of this Agreement.

2. On or before January 15, 2016, the City, VLT and BCCH shall enter into a Purchase and Sale Agreement that incorporates the relevant terms and conditions outlined in this Agreement and additional terms and conditions customarily contained in Purchase and Sale Agreements for commercial property in Chittenden County, Vermont. Although this Section IV accurately describes the Parties' intent, the terms outlined in this Section IV shall only become enforceable obligations under and in accordance with such Purchase and Sale Agreement. The City's obligation to purchase the Public Open Space is further contingent on performance by VLT under the terms of a separate agreement to be entered into by and between the City and VLT.
3. The City and VLT shall pay for their closing costs, including legal fees, related to the acquisition of the Public Open Space.
4. The City shall obtain the necessary local and State permits for any and all improvements it makes to the Public Open Space and pay for all costs and expenses associated therewith, except as otherwise set forth herein.

V. Acquisition of a portion of the Property by CHT.

1. CHT shall enter into an option agreement ("Option") with BCCH on or before December 15, 2015, to acquire a portion of the Property, identified on the Plan as #1 and #2, from BCCH sufficient to develop the CHT Project and related site improvements (exact acreage and location to be determined) (the "CHT Parcel") for a purchase price of One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00). The Option shall incorporate the relevant terms and conditions outlined in this Agreement, including a closing condition such that the parcel to be purchased by CHT will have been assigned or allocated up to 160 units of residential density.
2. Conditional upon the CHT Project approval by the DRB and provided that a) the total number of rental units in the Projects does not exceed 640, b) all 160 units in the CHT Project qualify as IZ units, and c) the CHT Project complies with all IZ requirements including, but not limited to, 9.1.15 of the Burlington Comprehensive Development Ordinance, then the CHT Project shall be deemed to fully satisfy the City's IZ requirement for the portion of the Projects developed as multi-family rental units. In any event, CHT shall only be required to develop the lesser of (i) the actual number of inclusionary zoning units necessary to satisfy the requirement for the portion of the Projects developed as multi-family rental units; or (ii) 160 inclusionary units.
3. Nothing in the Agreement or this Section is intended to waive or reduce the obligations of BCCH under Article 9 of the City of Burlington Comprehensive Development

Ordinance, which is entitled “Inclusionary and Replacement Housing”; however, it is the intent of the Parties to the Agreement that CHT, on its own or with partners, will be fulfilling BCCH’s obligation under Article 9. By virtue of its execution of the Agreement and the Option referenced in Paragraph (V) 1 above, the IZ obligations for that portion of the Projects developed on the College Parcel that consists of multi-family rental units shall be considered fulfilled. Upon the issuance of all necessary municipal and state permits for the CHT Project, the remaining IZ requirements for that portion of the BCCH Project that consists of multi-family rental units shall be considered fulfilled.

4. CHT will seek permits for the CHT Parcel and will create several building pads that will allow for the construction of the units that satisfy IZ requirements in phases. If CHT is unable to perform and complete all phases within six years of receipt of its permits, with an option to extend for an additional three years, then the City will have the option to take possession of the pads as permitted, for consideration of \$10,000 per unit, to ensure that the balance of the units intended to satisfy IZ requirements for the portion of the Projects developed as multi-family rental units are actually constructed. The Parties shall work together in good faith to develop the mechanism by which this paragraph shall be implemented.
5. The City shall not have the right to exercise the option referenced in Paragraph (V)4, above, if the reason CHT has not performed is due to a failure of the DRB to approve CHT’s application for the required number of IZ units.
6. In the event the City takes possession of the pad as permitted, pursuant to the option referenced in 4 above, it shall not be allowed to construct, nor allow others to construct, units on the building pads that do not fulfill CHT’s obligation to develop IZ units, as set forth in this Agreement.

VI. Responsibilities Specific to the City and VLT.

In addition to the City’s responsibilities contained throughout this Agreement, the City shall also be responsible for the following:

1. The City shall, in consideration of improvements to be made to the new Public Open Space and the establishment of the Conservation Payment at a price below fair market value, reduce the Parks & Recreation Department permit and/or impact fees for the Development Parcel by \$300,000.00, with such reduction applicable to the BCCH Project only.
2. The City and BCCH acknowledge and agree that the proposed development of the Development Parcel in the manner described herein and indicated on the Plan will require changes to existing zoning, and they agree to work in good faith to reach agreement on zoning changes required to implement the Plan as it may be amended from time to time.

The City and BCCH's commitments under this Agreement are contingent upon reaching agreement with regard to an array of zoning issues that may be required to implement the development of the BCCH Project and the CHT Projects as generally depicted on the Plan. The City, acting through the Office of the Mayor, shall use good faith efforts to support amendments to the existing zoning ordinance in order to facilitate BCCH's ability to secure approval for the development of the Property in the manner described herein and depicted on the Plan, with the understanding that only the Burlington City Council and Planning Commission have the authority to adopt amendments to the zoning ordinance. The Parties acknowledge that prior to developing the Property in the manner described herein and depicted on the Plan, it will be necessary for BCCH and CHT to obtain approval for the Projects from the Burlington Development Review Board, that the Development Review Board is an independent body not under the City's control, and that the City does not and cannot guaranty that the Development Review Board will approve the Projects.

3. Through the City Council's authorization and upon the execution of this Agreement, the Manager of the City's Housing Trust Fund shall issue Certificates of Inclusionary Housing Compliance, when and as such certificates are required, such that the CHT Project shall be deemed to fully satisfy the City's inclusionary zoning requirement for the portions of the Projects that are developed as multi-family rental units subject to the terms of this agreement. Certificates of Housing compliance with respect to the development of multi-family rental units on the College Parcel will be issued by virtue of the execution of this Agreement and the Option referenced in Paragraph (V) 1 above. Upon the issuance of all necessary municipal and state permits for the CHT Project, Certificates of Housing Compliance will be issued as needed for that portion of the BCCH Project that consists of multi-family rental units.
4. The City and VLT hereby acknowledge that an appraisal commissioned by BCCH may reveal that the Public Open Space has a value in excess of the purchase price. The City and VLT recognize that it is the intent of BCCH to make a charitable contribution to them of the difference between the fair market value and the purchase price. The City and VLT shall cooperate with BCCH in the preparation of Tax Form 8283, as required by the Internal Revenue Service, to substantiate the occurrence of the closing on the sale of the Public Open Space and that a charitable contribution occurred to a qualified organization, but BCCH shall be solely responsible for the calculation and substantiation of the amount and other details of the charitable contribution; provided, however, that neither the City nor VLT will be obligated to so cooperate if it has significant concerns about the tax deduction. BCCH acknowledges that in order to claim a charitable contribution, BCCH will have to comply with the IRS substantiation requirements. This provision shall survive closing of the sale of the "Public Open Space."

VII. Responsibilities Specific to BCCH.

In addition to BCCH's responsibilities contained throughout this Agreement, BCCH shall

also be responsible for the following:

1. BCCH will make contributions to public improvements planned for the existing nature trail (i.e. reconstruction of trail base, widening of trail, tree trimming/removal, and signage) on the Public Open Space as depicted on the Plan after the City Closing as and when such improvements are completed in an amount not to exceed \$100,000.00 in consultation with the Department of Parks, Recreation and Waterfront.
2. BCCH shall use its best efforts to preserve significant trees located within thirty (30) feet of its common northerly boundary line with the City cemetery in collaboration with the City Arborist, meaning that at the very least; BCCH shall not remove any trees with a diameter greater than 36 inch in caliper without the prior consent of the City Arborist.
3. BCCH shall not install any solid privacy/screening fencing along its common boundary line between the Public Open Space and the Building #8 Parcel; however, it reserves the right to install ornamental fencing and/or dense landscaping in that location, as well as security lighting.
4. BCCH shall be responsible for paying all costs of developing the new public street as depicted on the Plan and associated infrastructure improvements, including, but not limited to sidewalks, utility connections, storm water management system, street trees, public recreation paths, etc., as may be required by the City or State.

VIII. Responsibilities Specific to CHT.

In addition to CHT's responsibilities contained throughout this Agreement, CHT shall also be responsible for the following:

1. CHT shall be responsible for obtaining its own financing for the development and construction of the CHT Project.
2. CHT shall fully cooperate with BCCH, so that BCCH can qualify for a charitable deduction, in connection with the sale of the CHT Parcel to CHT, or non-profit designee, as a "bargain sale", as defined by the IRC. CHT shall cooperate with BCCH in the preparation of Tax Form 8283, as required by the Internal Revenue Service, to substantiate the occurrence of the closing on the sale of the CHT Project and that a charitable contribution occurred to a qualified organization, but BCCH shall be solely responsible for the calculation and substantiation of the amount and other details of the charitable contribution; provided, however, that CHT will not be obligated to so cooperate if it has significant concerns about the tax deduction. BCCH acknowledges that in order to claim a charitable contribution, BCCH will have to comply with the IRS substantiation requirements. This provision shall survive closing of the sale of the CHT Project.
3. CHT shall be responsible for developing affordable multi-family rental housing units for the Projects, such that BCCH's inclusionary zoning requirements are met for the portions of the Projects that are developed as multi-family rental units.

IX. Responsibilities of the Parties and General Representations and Agreements.

1. As additional consideration for entering into this Agreement, the Parties agree to cooperate with each other, in a timely and expeditious manner, to obtain permits and approvals for the Projects including, without limitation, execution of permit applications. Further, the Parties agree to attend hearings as requested from time to time in support of the Projects (provided the Projects meet the goals set forth in this Agreement) and agree not to appeal, oppose, or otherwise obstruct, either directly or indirectly, the Projects herein in any permit or approval proceeding, including applications for all local, state and federal permits, permit amendments, licenses and approvals required for the development, construction, use and occupancy of the Projects. As used herein, the term “oppose” shall include a request for a hearing or party status in any proceeding or the filing of any action, petition or complaint in or with any court, tribunal or administrative agency opposing or raising claims or objections against the construction or development of the Projects.
2. The Parties agree that the final plan for the Property will accommodate and support alternative forms of transportation, including the use of bicycles, car-sharing and other progressive concepts.

X. Notices.

Any Notices, requests, demands and other communications to be given hereunder shall be in writing and shall be deemed given if delivered or mailed by certified mail, postage pre-paid, return receipt requested, addressed as follows:

If to the City of Burlington:	City of Burlington 149 Church St. Burlington, VT 05401
If to the Vermont Land Trust:	Vermont Land Trust, Inc. 8 Bailey Avenue Montpelier, VT 05602
If to Champlain Housing Trust:	Champlain Housing Trust, Inc. 88 King Street Burlington, VT 05401
If to BC Community Housing, LLC:	BC Community Housing, LLC P.O. Box 1335 Burlington, VT 05402-1335

XI. Force Majeure.

1. A party shall not be deemed in violation of this Agreement if it is prevented from performing any obligations hereunder by reasons of strikes, boycotts, labor disputes, acts

of God, acts of the public enemy, acts of superior governmental authority, severe weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the party experiencing force majeure gives written notice to the other Parties identifying the nature of such force majeure, and when it began. The party experiencing force majeure shall take immediate action to attempt to remove such causes of the force majeure as may occur from time to time, and its operations under this Agreement shall be resumed immediately after such cause has been removed, provided that no party shall be required to settle any labor dispute except upon terms that party deems acceptable. The suspension of any obligations shall not affect any rights accrued under this Agreement prior to the occurrence of the force majeure.

XII. Dispute Resolution; Waiver

1. Dispute Resolution.

a. If any dispute shall arise with regard to the performance or interpretation of any terms of this Agreement, the Parties agree to use the following procedures prior to any party pursuing other available avenues of legal redress: (i) **Negotiation**. A meeting shall be held between representatives of the Parties with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; such Negotiation Meeting shall be held within three (3) business days of any Party's written request for such a meeting; or (ii) **Mediation** in accordance with this provision in the event the Parties are unable to resolve their dispute through Negotiation.

b. Any Party (the "**Notifying Party**") may initiate Dispute Resolution of any dispute by giving written Notice of Dispute to the other Party (the "**Receiving Party**"). The Notice of Dispute shall include, in detail, the issues in dispute that the Notifying party deems relevant to the mediation. Within five (5) business days following the date of the Notice of Dispute, the Receiving Party shall submit to the party who initiated the Mediation a list of three (3) persons in Vermont who (i) do not have any professional, business, family or personal affiliation with any of the parties that would compromise their independence, (ii) have training, experience and expertise in real estate law, development, permitting, financing and/or construction (as may be relevant to the dispute), and (iii) are reasonably available to mediate the dispute (the "**Mediator List**"). The party initiating the Notice of Mediation shall, within three (3) business days following receipt of the Mediator List select a mediator (the "**Designated Mediator**") from the Mediator List, and give written notice of the identification of the Designated Mediator to the Receiving Party and to the Designated Mediator. If the Receiving Party fails to approve a Mediator List within the time provided above, the Notifying Party shall have the right, upon notice to the Receiving Party, to designate a Designated Mediator who the Notifying Party reasonably believes will satisfy the Mediator criteria set forth above. The Designated Mediator shall, as expeditiously as is reasonably possible, schedule and conduct a mediation of the dispute. The parties shall use their best efforts to make themselves available and to cooperate in the mediation. If a party fails to attend or otherwise participate in the Mediation as scheduled by the Designated Mediator, the

Designated Mediator shall conduct the Mediation and, within ten (10) business days following the Mediation, issue a Mediator's Report with recommendations as to the resolution of the dispute. The cost of Mediation, including any fees charged by the Mediator, shall be paid in equal shares by the Notifying Party and the Receiving Party.

c. All Negotiation shall occur at a mutually agreeable location; all Mediation shall occur or at the office of the Designated Mediator unless the parties to the dispute otherwise agree.

d. The substantially prevailing party in any claim or counterclaim in any legal proceeding relating to or arising from this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs.

2. A waiver by any party of any default in the performance of any of the covenants, terms or conditions of this Agreement shall not be deemed or considered to be a waiver of any other matter, and the various rights, powers, privileges, options and remedies of the Parties herein contained shall be cumulative, and no one of them shall be deemed to be exclusive of any other, or exclusive of any rights, powers, privileges, options or remedies provided by law.

XIII. Miscellaneous

1. This Agreement shall not be assigned by any party without the advance written approval of the other Parties, which shall not be unreasonably withheld or delayed.
2. This Agreement shall be binding on and benefit the parties and the approved successors and assigns. The representations, commitments and obligations of the Parties set forth herein shall survive the execution of this agreement, the Purchase and Sale Agreement, and any and all of the closings referenced herein.
3. This Agreement shall be governed and construed in accordance with the laws of the State of Vermont. In the event any term, covenant or condition herein contained is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect any other term, covenant or condition herein contained, provided that such invalidity does not materially prejudice any party in their respective rights and obligations contained in the valid terms, covenants or conditions hereof. The language in all parts of this Agreement shall in all cases be construed simply according to its fair meaning and not strictly construed against any party, as it is agreed that the Parties participated in the drafting hereof.
4. This Agreement may not be amended except by mutually agreed upon written amendment, signed and dated by the Parties.
5. This Agreement, together with the exhibits referenced herein and/or attached hereto, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements or representations, oral or written, on the

same subject.

6. The headings in this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning hereof.

Two Signature Pages To Follow

IN WITNESS WHEREOF, this Agreement is executed by the duly authorized officers or representatives of the parties hereto.

DATED this _____ day of _____, 2015.

CITY OF BURLINGTON

By: _____

Title: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At _____, in said County and State, this ____ day of _____, 2015, personally appeared _____, Member and Duly Authorized Agent of the City of Burlington and he/she acknowledged the within instrument by him/her subscribed, to be his/her free act and deed and the free act and deed of the City of Burlington.

Before me, _____

Notary Public

My Commission expires: 2/10/19

VERMONT LAND TRUST, INC.

By: _____

Title: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At _____, in said County and State, this ____ day of _____, 2015, personally appeared _____, Member and Duly Authorized Agent of Vermont Land Trust, Inc. and he/she acknowledged the within instrument by him/her subscribed, to be his/her free act and deed and the free act and deed of Vermont Land Trust, Inc.

Before me, _____

Notary Public

My Commission expires: 2/10/19

CHAMPLAIN HOUSING TRUST, INC.

By: _____

Title: _____

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At _____, in said County and State, this ____ day of _____, 2015, personally appeared _____, Member and Duly Authorized Agent of Champlain Housing Trust, Inc. and he/she acknowledged the within instrument by him/her subscribed, to be his/her free act and deed and the free act and deed of Champlain Housing Trust, Inc.

Before me, _____

Notary Public

My Commission expires: 2/10/19

BC COMMUNITY HOUSING, LLC

By: _____

Eric F. Farrell, Sole Member of EF Farrell, LLC,
General Member

STATE OF VERMONT
CHITTENDEN COUNTY, SS

At _____, in said County and State, this ____ day of _____, 2015, personally appeared _____, Member and Duly Authorized Agent of BC Community Housing, LLC and he/she acknowledged the within instrument by him/her subscribed, to be his/her free act and deed and the free act and deed of BC Community Housing, LLC.

Before me, _____

Notary Public

My Commission expires: 2/10/19

List of Exhibits

Exhibit A	Property Description
Exhibit B	Plan entitled “BC Community Housing & Burlington College, Site Concepts” prepared by TJ Boyle Associates.
Exhibit C	Site Design Process - Memorandum of Understanding
Exhibit D	Definition of an Urban Wild park

Exhibit A

Being all and the same lands and premises conveyed to BC Community Housing, LLC by Warranty Deed of Burlington College by Warranty Deed dated February 2, 2015 and recorded in Volume 1268, Page 198 of the City of Burlington Land Records, and described therein as follows:

Parcel One:

Being a 9.16 acre, more or less, parcel of land with improvements thereon and depicted as "Burlington College Vol. 1126 Pg. 34 Lot B Exist. 9.16 Ac. (Not Modified)" on a survey entitled "Lot Line Adjustment between 329 & 351 North Avenue Burlington College Burlington, Vermont" dated December 18, 2014, prepared by Civil Engineering Associates, Inc. and recorded in Map Slide 509c of the City of Burlington Land Records (the "Plat").

Being all and the same land and premises conveyed to Burlington College by Warranty Deed of The Roman Catholic Diocese of Burlington, Vermont, Inc. dated December 31, 2010 and recorded in Volume 1126, Page 34 of the City of Burlington Land Records, and being described therein as follows:

"The lands and premises situated on the westerly side of North Avenue in the City of Burlington, commonly known and designated as No. 311 thereon, formerly known as the "Lakeview Sanitarium" property and the "St. Joseph Group Home" property, containing three separate and distinct parcels of land. Said parcels are described as follows:

Parcel 1: Being all and the same lands and premises conveyed to The Roman Catholic Diocese of Burlington, Vermont by Warranty Deed of Alfred Perrota, dated May 19, 1945 and recorded in Volume 122, at Pages 622-623 of the City of Burlington Land Records.

Parcel 2: Being a portion of the lands and premises conveyed to the Roman Catholic Diocese of Burlington, Vermont, Inc. by Warranty Deed of Vermont Catholic Charities, Inc., (resulting successor corporation by way of a merger with St. Joseph Child Center, Inc., formerly known as The Providence Orphan Asylum and Hospital of Burlington) dated December 28, 2010 and recorded in Volume 1126 at Page 32 of the City of Burlington Land Records, which corrects and confirms the Warranty Deed dated April 18, 1975, and recorded in Volume 231, at Pages 561-562 of the Land Records of the City of Burlington. Further being all of "Lot A" as described by Warranty Deed to Vermont Catholic Charities, Inc. from Central Vermont Railway, Inc. dated June 24, 1955 and of record at Volume 146, Page 619 of said Land Records.

Parcel 3: Being a portion of the lands and premises conveyed to the Roman Catholic Diocese of Burlington, Vermont, Inc. by Warranty Deed of Vermont

Catholic Charities, Inc., (resulting successor corporation by way of a merger with St. Joseph Child Center, Inc., formerly known as The Providence Orphan Asylum and Hospital of Burlington) dated December 28, 2010 and recorded in Volume 1126 at Page 32 of the City of Burlington Land Records, which corrects and confirms the Warranty Deed dated April 18, 1975, and recorded in Volume 231, at Pages 561-562 of the Land Records of the City of Burlington. Further being all of "Lot B" as described by Warranty Deed to Vermont Catholic Charities, Inc. from Central Vermont Railway, Inc. dated June 24, 1955 and of record at Volume 146, Page 619 of said Land Records.”

Reference is made to the above mentioned deeds and documents, the records thereof and the references therein contained in further aid of this description.

Parcel Two:

Being an 18.49 acre, more or less, unimproved parcel of land depicted as “Burlington College Vol. 1126 Pg. 36 Lot C” on the Plat.

Being all and the same land and premises conveyed to Burlington College by the following two deeds: 1) Warranty Deed of The Roman Catholic Diocese of Burlington, Vermont, Inc. dated December 31, 2010 and recorded in Volume 1126, Page 36 of the Burlington Land Records; and 2) Warranty Deed of The Roman Catholic Diocese of Burlington, Vermont, Inc. dated December 31, 2010 and recorded in Volume 1126, Page 38 of the Burlington Land Records LESS AND EXCEPT a six (6) acre, more or less, improved parcel of land retained by Burlington College and depicted as Lot A on the Plat (the “Retained Parcel”). Being a portion of the lands and premises conveyed to the Roman Catholic Diocese of Burlington, Vermont, Inc. by Warranty Deed of Vermont Catholic Charities, Inc., (resulting successor corporation by way of a merger with St. Joseph Child Center, Inc., formerly known as The Providence Orphan Asylum and Hospital of Burlington) dated December 28, 2010 and recorded in Volume 1126 at Page 32 of the City of Burlington Land Records. Also being a portion of the lands and premises conveyed to the Roman Catholic Diocese of Burlington, by Warranty Deed of Vermont Catholic Charities, Inc., (resulting successor corporation by way of a merger with St. Joseph Child Center, Inc., formerly known as The Providence Orphan Asylum and Hospital of Burlington) dated April 18, 1975, and recorded in Volume 231, at Pages 561-562 of the Land Records of the City of Burlington.

Grantor hereby reserves the following non-exclusive easements over the parcels herein conveyed, which shall be for the benefit of and appurtenant to the Retained Parcel:

1. An easement for the discharge of stormwater from the Retained Parcel via sheet flow or into existing drainage areas and stormwater

- facilities, as such drainage areas and stormwater facilities may be modified and developed by Grantee on the herein conveyed parcels;
2. An easement for utilities providing service to the Retained Parcel; and
 3. An easement, to: i) construct and maintain driveways and sidewalks connecting the Retained Parcel to any future private drives or sidewalks constructed by Grantee or its successors within sixty (60) feet of the Retained Parcel, the locations of which shall be subject to the written approval of Grantee or its successors, which approval shall not be unreasonably withheld, delayed or conditioned; and ii) use said constructed private drives and sidewalks to provide vehicular and pedestrian ingress and egress to and from the Retained Parcel (until such time as any such private drives and sidewalks are accepted by the City of Burlington as a public road(s) or public sidewalks). Grantee shall be under no obligation to construct any private drives or sidewalks in connection with the foregoing easement.

Grantor shall exercise such easement rights in a manner that does not unreasonably interfere with Grantee's development of the parcels herein conveyed. Grantee may, at its expense, re-locate any of the foregoing easements from time-to-time provided that the new location serves the Retained Parcel in a no less convenient manner.

Grantor hereby conveys the following non-exclusive easements over the Retained Parcel, which shall be for the benefit of and appurtenant to the parcels herein conveyed:

1. An easement for the discharge of stormwater from the parcels herein conveyed via sheet flow or into existing drainage areas and stormwater facilities, as such drainage areas and stormwater facilities may be modified and developed by Grantor on the Retained Parcel; and
2. An easement for utilities providing service to the parcels herein conveyed.

Grantee shall exercise such easement rights in a manner that does not unreasonably interfere with Grantor's existing or future use of the Retained Parcel. Grantor may, at its expense, re-locate any of the foregoing easements from time-to-time provided that the new location serves the parcels herein conveyed in a no less convenient manner.

Reference is hereby made to a Declaration of Restrictive Covenant by BC Community Housing, LLC dated February 2, 2015 and to be recorded subsequent hereto in the City of Burlington Land Records, which shall subject a portion of the lands and premises herein conveyed to a restrictive covenant for the benefit of the Retained Parcel.

The lands and premises are conveyed subject to Commissioner's Award in favor of Rutland Canadian Railroad Company dated August 14, 1899 of record in Volume 46, Page 201 of said Land Records.

This parcel is conveyed subject to the terms and conditions of a certain Lease Agreement between the State of Vermont and the City of Burlington, dated June 18, 1985 and recorded in Volume 319 at Page 575 of the Land Records of the City of Burlington.

This parcel is conveyed subject to all matters depicted or noted on the Plat, including but not limited to the railroad right of way. Any and all parts of this parcel below the mean low water mark are conveyed by quitclaim only.

To the extent that it has not been extinguished by merger of title of the dominant and servient estates, Grantor hereby conveys and transfers to Grantee, by quitclaim only, all of its right, title and interest in that certain right-of-way described as an "open and unobstructed right of way for all purposes" in the Warranty Deed from William C. Stacy, et al to the Providence Orphan Asylum and Hospital of Burlington dated September 30, 1872 and recorded in Volume 10 at Page 374 of the City of Burlington Land Records.

Reference is made to the above mentioned deeds and documents, the records thereof and the references therein contained in further aid of this description.

**BC COMMUNITY HOUSING &
BURLINGTON COLLEGE
SITE CONCEPTS**

SCALE 1' = 80'

EXHIBIT B

LAKE CHAMPLAIN

CITY OF BURLINGTON

TEXACO
BEACH

BIKE PATH
ROW

OPEN SPACE
12 ACRES
*INCLUDES TEXACO BEACH,
DOES NOT INCLUDE BIKE
PATH ROW

NATURE
TRAIL

GARAGE

STONE
HOUSE

#2
5-STORY

#1
4-STORY

#3
4-STORY

#3
5-STORY

#5
3-STORY

#4
4-STORY

#4
5-STORY

#4
5-STORY

#3
3-STORY

#9

#7
3-STORY

#6
4-STORY

#6
5-STORY

MULTI-USE
4-STORY

FUTURE PARKING
GARAGE

FUTURE
HOUSING
5-STORY

FUTURE BURLINGTON
COLLEGE
4-STORY

EXISTING
BURLINGTON
COLLEGE

ORPHANAGE

FUTURE
HOUSING
5-STORY

#8
5-STORY

LAKE VIEW CEMETERY

**BC COMMUNITY HOUSING SITE
DEVELOPMENT PROGRAM**

Bldg.		UNITS
FOR RENT - AFFORDABLE HOUSING		
#1	Senior	80
#2	Family	80
FOR RENT - MARKET RATE HOUSING		
#4	Multi-Family	153
#6	Multi-Family	90
FOR SALE - MARKET RATE HOUSING		
#3	Multi-Family (Workforce)	80
#5	Townhouses	9
#7	Townhouses	8
#8	Multi-Family	70
#9	Neighborhood Community Building	
TOTAL HOUSING UNITS		570

**BURLINGTON COLLEGE SITE
DEVELOPMENT PROGRAM**

COLLEGE BUILDINGS	SF
Existing	32,000 SF
Future	40,000 SF
RENTAL HOUSING	UNITS
Orphanage	63
Future Housing	177
TOTAL HOUSING UNITS	240
NON-RESIDENTIAL	SF
Future	20,000 SF

0 80 160 240



NORTH AVE

BC COMMUNITY HOUSING & BURLINGTON COLLEGE SITE CONCEPTS

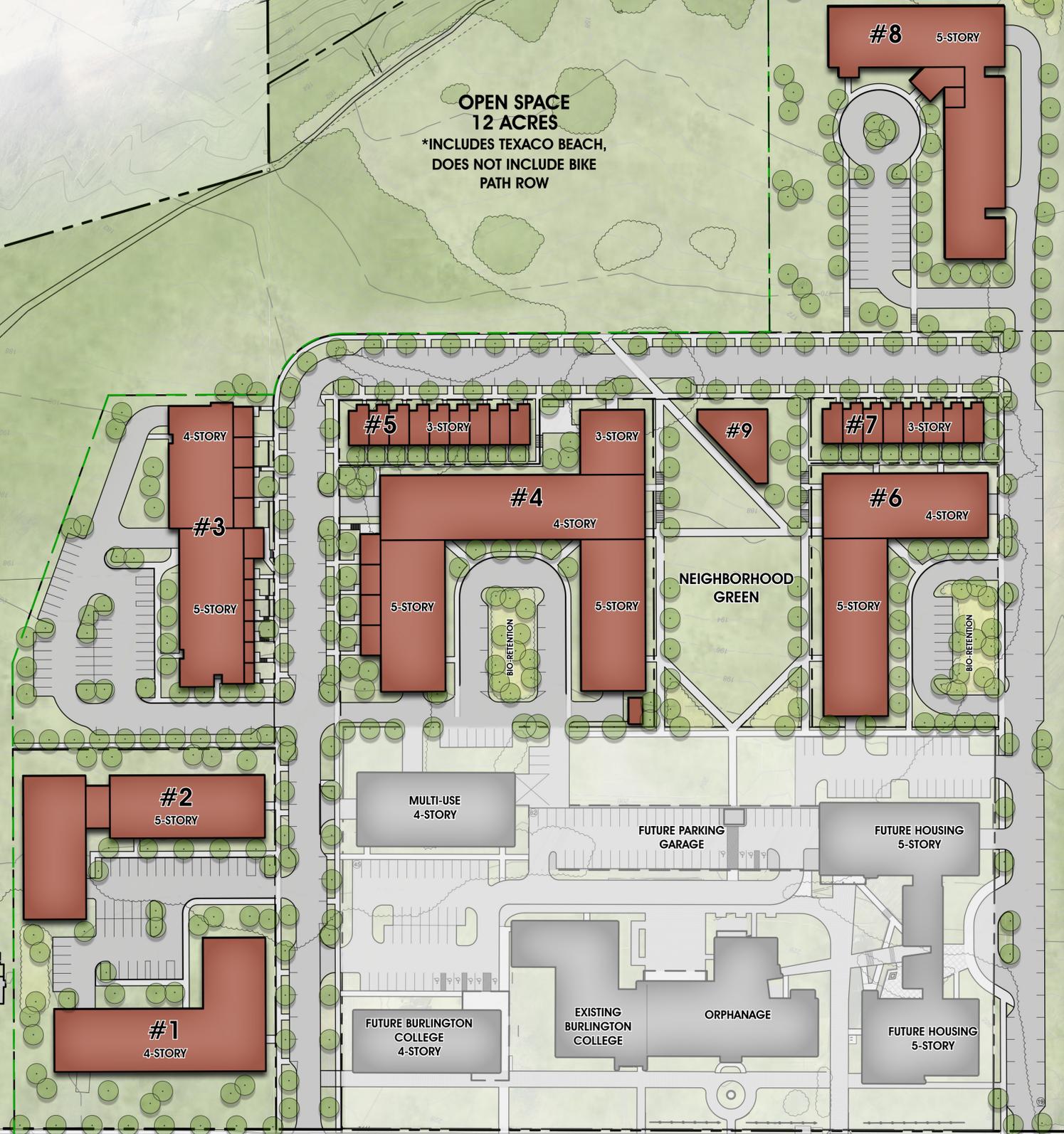
SCALE 1' = 60'

TEXACO BEACH

BIKE PATH ROW

**OPEN SPACE
12 ACRES**
*INCLUDES TEXACO BEACH,
DOES NOT INCLUDE BIKE
PATH ROW

CITY OF BURLINGTON



BC COMMUNITY HOUSING SITE DEVELOPMENT PROGRAM

Bldg.		UNITS
FOR RENT - AFFORDABLE HOUSING		
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TOTAL HOUSING UNITS	240
NON-RESIDENTIAL	SF
Future	20,000 SF

LAKE VIEW CEMETERY

0 60 120 180

NORTH

NORTH AVE

T. J. Boyle Associates
landscape architects • planning consultants

Site Design Process - Memorandum of Understanding
Former Burlington College Land

BC Community Housing, LLC ("BCCH") is the owner of 27.65 acres of land recently purchased from Burlington College, located at 311 and 329 North Avenue, Burlington and situated between North Avenue and Lake Champlain ("the Property").

BCCH desires to engage with the following entities: the City of Burlington ("City"), the Vermont Land Trust ("VLT"), and the Champlain Housing Trust ("CHT"), (collectively, the "Interested Parties"), in a non-binding collaborative planning process for the purpose of exploring possible site designs for the Property.

The Interested Parties and BCCH recognize that the Property is iconic and offers the community a unique opportunity to address the significant demand for additional housing within the City, while also responding to other important community needs in creative ways.

The Interested Parties also recognize that any outcome of this process must take into consideration BCCH's substantial investment in the Property and financial risk and allow BCCH to achieve its financial objectives, as determined by BCCH, in its sole discretion.

The Interested Parties also recognize that while the City of Burlington may participate in the process outlined in this MOU, this process shall occur prior to the commencement of the formal regulatory approval process, and no participation by the City or term of this MOU shall bind the City in its role as regulatory authority (e.g., its Development Review Board) or require or authorize the City to act contrary to any constitutional or statutory obligation it may have.

The Interested Parties will explore alternative designs to BCCH's current Master Plan consistent with the City's comprehensive plan that incorporate the following goals:

1. A range of housing types should be incorporated into the development, including housing that will serve a range of income levels and that will provide opportunity for homeownership as well as rental opportunities;
2. The final Plan should include open space, some of which may be required as part of the zoning process, but some of which may require consideration of reasonable compensation to the owner; the open space, including the waterfront beach area west of the bike path, should be open to the public; community gardens and the existing East – West connection to the Bike Path should be enhanced so as to increase the public access to the Waterfront from the Old North End;
3. The bluffs directly east of the bike path should be protected from any construction and development;
4. The development should be sensitive to and protect significant natural features, especially a path, and the tree scape on the bluffs, as well as cultural resources, such as the old orphanage;
5. Neighborhood commercial uses that serve the local neighborhood should be allowed but not required and as a result, consideration should be given to allowing currently prohibited uses;

6. Development of this property should enhance revitalization of Old North End, and commerce along North Avenue should be considered;
7. The development should support alternative modes of transportation in order to minimize traffic impacts;
8. The site plan should incorporate “sustainability” components, such as composting, stormwater management, food production, and energy savings where possible and appropriate.

The Interested Parties will retain a qualified consultant (“Consultant”) to facilitate a process that will take broad public input, the product of which may be one or more alternative site plans for the Property. VLT, the City and BCCH will establish a reasonable budget for and share in underwriting the cost of the Consultant’s work, and BCCH together with the Interested Parties will direct this work. This process will include:

- The Consultant’s familiarizing itself with the Property’s physical characteristics, its history, the surrounding landscape context, applicable regulatory and permit constraints, and other relevant information.
- The Consultant’s preparing for and conducting an intensive workshop in which the BCCH, the Interested Parties and other community members and experts, including real estate experts, are brought together to help envision one or more alternative site plans for the Property.
- Opportunities for community input before the Interested Parties and BCCH reach agreement on a preferred site plan.

The formal participants in the workshop will be:

BCCH through Eric Farrell and Will Raap, together with its design team of TJ Boyle and Associates, Duncan–Wisniewski Architecture, Civil Engineering Associates

Champlain Housing Trust through Michael Monte

City of Burlington through Jesse Bridges, Peter Owens and a Representative to be selected by the Council

Vermont Land Trust through Gil Livingston

BCCH and the Interested Parties may invite other participants whose knowledge or perspective could improve the process and design outcomes.

During the design process, or as a product of that process, if BCCH and the Interested Parties reach consensus on a preferred site plan that meets the above goals (“Plan”), the Interested Parties will:

- 1) Work collaboratively to address any conflict or issues related to City regulations, zoning ordinances, or permitting processes (to the extent this would not conflict with the City’s regulatory role or statutory obligations);
- 2) Work in good faith to determine a fair and equitable way to achieve all the components of a successful Plan, including utilizing sources such as the Open Space Conservation Fund and other creative methods for offsetting the cost/financial impact to BCCH of the public access and open space components of the Plan to the extent they are not required by existing regulations;

- 3) Consider how other reasonable public incentives, financing mechanisms or other tools could help advance the success of the Plan; and
- 4) If appropriate, coordinate with the City Council to facilitate the approval of an agreement by the Council to any public funding or actions.

If despite the good faith efforts of BCCH and the Interested Parties, it appears to either BCCH or the City that they have reached or will likely reach an impasse and/or are unlikely to reach agreement on a revised Plan to be submitted for regulatory approval, then this agreement may be unilaterally terminated by either BCCH or the City. Upon termination, the Interested Parties shall have no obligation under this agreement.

BCCH and the Interested Parties will meet with the Consultant to develop a scope of services, timeline and design process details.

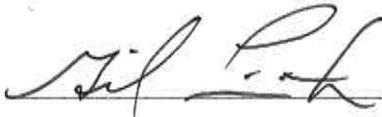
Dated at Burlington, Vermont this 21th day of February, 2015



Eric Farrell for BCCH



Mayor Miro Weinberger



Gil Livingston for VLT



Michael Monte for CHT

Exhibit D

Urban Wild

Urban Wilds will be defined as those lands that provide habitat for rare and endangered plant and animal communities, wetlands and other riparian systems, flood plain, unique geological and hydrological features, important wildlife habitat and travel corridors, areas important for scientific research and education, scenic vistas, trails, passive and active recreation, sustainable forest communities, and cultural features.

Portions of other parks within the city possessing sensitive natural features may also be considered “Urban Wilds” for management purposes. All future acquisitions of significant natural areas and important open space for conservation and passive and active recreational purposes will be placed into this category.